

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 00-0037 CG

Charity Gaming

Appeal of Indiana Charity Gaming License Renewal Denial

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Charity Gaming – Management and Conduct of Events

Authority: IC 4-32-9-15; IC 4-32-9-28; IC 4-32-9-29; IC 4-32-12-4; Park 100 Dev. Co. v. Indiana Dep't of State Rev., 429 N.E.2d 220 (Ind. 1981); DeHart v. State, 471 N.E.2d 312 (Ind. Ct. App. 1984) (citing Meade Elec. Co. v. Hagberg, 159 N. E.2d 408 (Ind. App. 1959)).

AMVETS Post No. 97, Inc. (hereinafter referred to as Petitioner) protests the Department's denial of its renewal application based upon a violation of IC 4-32-9-15.

STATEMENT OF FACTS

The Petitioner filed Form CG-2R (Indiana Department of Revenue Annual Bingo Renewal Application) on November 10, 1999. On January 11, 2000, the Department denied Petitioner's renewal application. The Petitioner protested the Department's denial in a letter dated January 13, 2000. The Petitioner's protest was filed in a timely manner. An administrative hearing, on Petitioner's protest, was held on Wednesday, March 1, 2000, pursuant to IC 4-32-8-1. A transcript of the hearing was received by the Department on March 8, 2000.

I. Charity Gaming – Management and Conduct of Events

DISCUSSION

The Petitioner protests the Department's denial of its renewal application based upon a violation of IC 4-32-9-15. The Petitioner states, "...We did have an agreement but only because [Ms. D] is a 2 year member and is well known for her volunteer work and has

helped several Bingo halls when she is a member of them and they ask for her help. She has been around Bingo and has been an Operator of (2) two and volunteer of others and we could use the knowledge she has to help our Post..." (Letter from Petitioner to Department 2/1/00). The Petitioner argues that this contract was not illegal because it was with a member of their organization, and not with a person outside of their membership. In support of its protest the Petitioner cites the Department's Publication #2 (Charity Gaming Information) page 26 which states, "...* Any person or organization outside your membership who enters into a verbal or written contract to manage your charity games operation commits a Class D felony." Department's Publication #2 states on the front cover that it is intended to give assistance to the general public. The publication is clearly not a substitute for the law nor is it a restatement. The law governing contracting is as follows:

IC 4-32-9-15 A qualified organization may not contract or otherwise enter into an agreement with an individual, a corporation, a partnership, a limited liability company, or other association to conduct an allowable event for the benefit of the organization. A qualified organization shall use only operators and workers meeting the requirements of this chapter to manage and conduct an allowable event.

IC 4-32-12-4 (a) Except as provided in subsection (b), a person or an organization that violates a provision of this article commits a Class B misdemeanor.

(b) An individual, a corporation, a partnership, a limited liability company, or other association that enters into a contract or other agreement with a qualified organization in violation of IC 4-32-9-15 commits a Class D felony.

The Petitioner admits that they entered into an agreement with Ms. D to run their bingo operation, but would not have had they known it was illegal. (Record at 18, 20-24, and 27). See also Department's Exhibits 1 and 3. Since the Petitioner admits to contracting, the only issue to be resolved is whether the statute reads as Petitioner states. IC 4-32-9-15 clearly states that a qualified organization may not contract or otherwise enter in an agreement with an individual to conduct an allowable event. The statute does not make a distinction between contracting with someone who is and someone who is not a member of the organization.

IC 1-1-4-1(1) states, "[t]he construction of all statutes of this state shall be by the following rules, unless such construction is plainly repugnant to the intent of the legislature or of the context of the same statute... Words and phrases shall be taken in their plain, or ordinary and usual sense." When construing a statute, a court is to give the statutory words and phrases their plain, ordinary, and usual meaning unless the legislature's intent reveals a contrary purpose. Park 100 Dev. Co. v. Indiana Dep't of State Rev., 429 N.E2d 220 (Ind. 1981).

The taxpayer in this case is asking the Department to read an exception in to the statute where none exists. When the language of a statute is plain and unambiguous, the court

has no power to construe the statute for the purpose of limiting or extending its operation. DeHart v. State, 471 N.E.2d 312, 314 (Ind.App. 1984) (citing Meade Elec. Co. v. Hagberg, 159 N. E.2d 408, 413 (Ind. App. 1959)). The Department will not read something in to the law that does not exist.

FINDING

The taxpayer's protest is denied. If the Petitioner wishes to once again conduct charity gaming they will need to start the application process again by filing a CG-1 and CG-2 with the Department's charity gaming section. If the Petitioner applies for a license, a public hearing must be held pursuant to IC 432-9-5(g), and a decision will then be made as to whether or not to grant the Petitioner a license to conduct charity gaming.